



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2023-0061]

RIN 1625-AA00

### Safety Zone; Coast Guard PSU-312 Training Exercise South Bay, San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of San Francisco Bay, near Treasure Island, San Francisco, CA, in support of the Coast Guard Port Security Unit (PSU)-312 training exercise. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the Coast Guard PSU-312 on-water training and associated operations. Unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective on January 21, 2023, from 9 a.m. through 6:30 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0061 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Anthony I. Solares, Waterways Management, U.S. Coast Guard; telephone (415) 399-3585, e-mail [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard received the final details of the training on January 12, 2023. It is impracticable to publish an NPRM because we must establish this safety zone by January 21, 2023, and lack sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to protect personnel, vessels, and the marine environment in the navigable waters around the potentially hazardous on-water training and associated operations involving vessels firing blank rounds.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential

hazards associated with the Coast Guard PSU-312 training operations scheduled to occur on January 21, 2023, will be a safety concern for anyone within the designated exercise area. The on-water training will involve vessels firing blank rounds. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters surrounding the potentially hazardous activity.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone around the Coast Guard PSU-312 training operations in the waters of the San Francisco Bay, near Treasure Island, San Francisco, CA, on January 21, 2023, from 9 a.m. until 6:30 p.m. The safety zone will encompass the navigable waters, from surface to bottom, within a circle formed by connecting all points 1,000 yards from the circle center at approximate position 37°49'15.3" N, 122°21'38.5" W (NAD 83); or as announced via Broadcast Notice to Mariners.

This regulation is needed to keep persons and vessels away from the immediate vicinity of the training operations to ensure the safety of personnel, vessels, and the marine environment. No vessel or person will be permitted to enter the safety zone without obtaining permission from the Captain of the Port Sector San Francisco (COTP) or a designated representative. A “designated representative” means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or officer designated by or assisting the COTP in the enforcement of the safety zone.

The COTP or the COTP’s designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7, including but not limited to Broadcast Notice to Mariners.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. The zone encompasses approximately 0.75 square miles of the waterway for less than 10 hours. Although this rule restricts access to the water encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP’s designated representative.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry to the area surrounding the potentially hazardous Coast Guard training operations. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T11-120 to read as follows:

#### **§165.T11-120 Safety Zone; Coast Guard PSU-312 Training Exercise South Bay, San Francisco Bay, San Francisco, CA.**

(a) Location. The following is a safety zone: The safety zone encompasses the navigable waters, from surface to bottom, within a circle formed by connecting all points 1,000 yards from the circle center at approximate position 37°49'15.3" N, 122°21'38.5" W (NAD 83); or as announced via Broadcast Notice to Mariners.

(b) Definitions. As used in this section, "designated representative" means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or an officer designated by or assisting the Captain of the Port Sector San Francisco (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) Enforcement period. This section will be enforced on January 21, 2023, from 9 a.m. through 6:30 p.m.

(e) Information broadcasts. The COTP or the COTP's designated representative will notify the maritime community of periods during which the safety zone described in paragraph (a) of this section will be enforced in accordance with § 165.7, including but not limited to Broadcast Notice to Mariners.

Dated: January 17, 2023

Taylor Q. Lam,  
Captain, U.S. Coast Guard,  
Captain of the Port, San Francisco.